

PART C – Decision under Appeal

The appellant appeals the reconsideration decision of the Ministry of Social Development and Social Innovation (Ministry) dated August 28, 2014, which denied her request for a Monthly Nutritional Supplement (“MNS”) for vitamin/mineral supplements and nutritional items on the basis that she did not meet the criteria set out in the *Employment and Assistance for Persons with Disabilities Regulation* (EAPWDR) section 67(1.1) and Schedule C, section 7(a). The Ministry specifically found the following:

- The appellant’s nurse practitioner did not confirm that as a result of her chronic, progressive deterioration of health, the appellant is displaying two or more of the symptoms set out in subs. 67(1.1)(b);
- The nurse practitioner did not confirm that the appellant required the additional nutritional items as part of a caloric supplementation to a regular dietary intake to alleviate the symptoms of her chronic, progressive deterioration of health and to prevent an imminent danger to her life, as required under subsection 7(a) of Schedule C and subs. 67(1.1)(d) of the EAPWDR; and
- The nurse practitioner did not confirm that the appellant required the requested vitamins and mineral supplements to prevent imminent danger to her life as required by subs. 67(1.1)(d) of the EAPWDR.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) section 67 and Schedule C – Health Supplements, s. 7.

PART E – Summary of Facts

The appellant did not attend the hearing. The panel confirmed that she had been notified of the date, time and location of the hearing and the hearing proceeded in the appellant's absence, pursuant to s. 86(b) of the *Employment and Assistance Regulation*.

At the reconsideration, the Ministry had its MNS decision summary dated July 31, 2014, the appellant's application for MNS signed by the appellant on June 3, 2014, with the Part C portion completed by a nurse practitioner on June 3, 2014, (the "MNS form") described below, as well as the appellant's written submissions in her request for reconsideration dated August 20, 2014.

On the first page of the MNS application form, the nurse practitioner indicated that the appellant's severe medical conditions (question #1) are schizophrenia with the comment "severe, requires daily numerous meds" and "HPTN" (hypertension) with the comment "requires low fat, low salt diet." The nurse practitioner left blank the response to question #2, "As a direct result of the severe medical condition(s) ... is the applicant being treated for a chronic, progressive deterioration of health? If so, please provide details ..." On page 2 of the MNS form, in response to question #3, "As a direct result of the chronic, progressive deterioration of health noted above, does the applicant display two or more of the following symptoms?" the nurse practitioner has not checked any of the listed symptoms. In response to question #4, the nurse practitioner provided the appellant's height and weight (154 cm and 180 lbs).

In response to the bullets under question 5 regarding vitamin or mineral supplementation, the nurse practitioner wrote that the specific vitamin or mineral supplementation required is, "additional money for specific foods" and she wrote, "follows strict diet" for the bullet asking for a description of how this item will alleviate the specific symptoms identified. The nurse practitioner did not answer the third bullet – describe how this item or items will prevent imminent danger to the applicant's life.

In response to question 6 of the MNS form, which has 1 bullet on page 2 and 3 bullets on page 3, the additional nutritional items indicated by the nurse practitioner are, "requires additional money for specific foods." In response to the second bullet question, "does this applicant have a medical condition that results in the inability to absorb sufficient calories to satisfy daily requirements through a regular dietary intake? If yes, please describe", the nurse practitioner wrote, "no." In response to the question, "Describe how the nutritional items required will alleviate one or more of the symptoms specified in question 3 and provide caloric supplementation to the regular diet," the nurse practitioner wrote, "will assist in following Mediterranean diet, low salt diet". In response to the question, "Describe how the nutritional items requested will prevent imminent danger to the applicant's life", the nurse practitioner wrote, "healthy heart diet."

In her written submission on reconsideration, the appellant wrote that her health care provider "says that I have all kinds of mental problems but I don't." The appellant listed the medications she takes for high blood pressure and heart burn, as well as another medication "because I have tried to kill myself." The appellant wrote, "I am trying to lose weight because I am overweight" and that she is on medication because she is "criminal insane." The appellant indicates "vitamins/minerals: multi extra dye free as essential vitamins and minerals with lutein and lycopene." In her notice of appeal dated September 8, 2014, the appellant wrote "I need to pay for some cancer meds, and I need to lose weight, there are some foods that I can't eat or used some [soups] cause of my health problems."

The Ministry indicated that the appellant is a person with disabilities in receipt of disability assistance.



PART F – Reasons for Panel Decision

The issue on this appeal is whether the Ministry's decision to deny the appellant's request for the MNS on the following bases is reasonably supported by the evidence: that the nurse practitioner did not confirm that as a result of her chronic, progressive deterioration of health on account of a severe medical condition the appellant displays two or more of the symptoms set out in subs. 67(1.1)(b); that the nurse practitioner did not confirm that the appellant requires the requested additional nutritional items as part of a caloric supplementation to a regular dietary intake, as set out in s. 7(a) of Schedule C, and to prevent imminent danger to life, as required by subs. 67(1.1)(d); and that the nurse practitioner did not confirm that the appellant requires the requested vitamins and mineral supplements to prevent imminent danger to life, as required by subs. 67(1.1)(d).

Legislation

EAPWDR

67. Nutritional Supplement

- (1) The minister may provide a nutritional supplement in accordance with section 7 [monthly nutritional supplement] of Schedule C to or for a person with disabilities in a family unit who receives disability assistance under
 - (a) section 2 [monthly support allowance], 4 [monthly shelter allowance], 6 [people receiving room and board] or 9 [people in emergency shelters and transition houses] of Schedule A, or
 - (b) section 8 [people receiving special care] of Schedule A, if the special care facility is an alcohol or drug treatment center, if the minister is satisfied that
 - (c) based on the information contained in the form required under subsection (1.1), the requirements set out in subsection (1.1) (a) to (d) are met in respect of the person with disabilities,
 - (d) the person is not receiving a supplement under section 2(3) [general health supplement] of Schedule C,
 - (e) the person is not receiving a supplement under subsection (3) or section 66 [diet supplements],
 - (f) the person complies with any requirement of the minister under subsection (2), and
 - (g) the person's family unit does not have any resources available to pay the cost of or to obtain the items for which the supplement may be provided.
- (1.1) In order for a person with disabilities to receive a nutritional supplement under this section, the minister must receive a request, in the form specified by the minister, completed by a medical practitioner or nurse practitioner, in which the practitioner has confirmed all of the following:
 - (a) the person with disabilities to whom the request relates is being treated by the practitioner for a chronic, progressive deterioration of health on account of a severe medical condition;
 - (b) as a direct result of the chronic, progressive deterioration of health, the person displays two or more of the following symptoms:
 - (i) malnutrition;
 - (ii) underweight status;
 - (iii) significant weight loss;
 - (iv) significant muscle mass loss;
 - (v) significant neurological degeneration;
 - (vi) significant deterioration of a vital organ;
 - (vii) moderate to severe immune suppression;
 - (c) for the purpose of alleviating a symptom referred to in paragraph (b), the person requires one or more of the items set out in section 7 of Schedule C and specified in the request;
 - (d) failure to obtain the items referred to in paragraph (c) will result in imminent danger to the person's life.

Schedule C – Health Supplements

Monthly nutritional supplement

7 The amount of a nutritional supplement that may be provided under section 67 [nutritional supplement] of this regulation is the sum of the amounts for those of the following items specified as required in the request under section 67(1)(c):

- (a) for additional nutritional items that are part of a caloric supplementation to a regular dietary intake, up to \$165 each month;
- (b) Repealed
- (c) For vitamins and minerals, up to \$40 each month.

Based on her submissions on reconsideration and in her notice of appeal, the appellant disagrees with the Ministry's decision to deny her request for MNS – she argues that she needs and wants to lose weight because she is overweight, she needs to pay for cancer medication, there are some foods she can't eat because of her health problems and she needs essential vitamins and minerals.

In its reconsideration decision, the Ministry found that the appellant's nurse practitioner confirmed in the MNS form that the appellant is being treated for a chronic, progressive deterioration of health on account of a severe medical condition – the appellant's severe schizophrenia and HPTN. The Ministry noted at the hearing that although the appellant has written in her notice of appeal that she needs money for cancer medication, a medical or nurse practitioner has not confirmed that the appellant has cancer. The Ministry pointed to the appellant's MNS form, noting that the nurse practitioner did not indicate on it that the appellant displays any of the listed symptoms as a result of her chronic, progressive deterioration of health, as required by subs. 67(1.1)(b) of the EAPWDR. The Ministry also noted that the appellant's nurse practitioner did not indicate that she requires MNS to supplement caloric intake (as required by section 7(a) of Schedule C of the EAPWDR). The Ministry argued that the information was for diet recommendations involving appropriate food choices within the appellant's regular diet. The Ministry also argued that the information provided by the nurse practitioner in the MNS form did not specify the types of vitamins/minerals the appellant requires, or how the requested vitamins/minerals will prevent imminent danger to the appellant's life, as required under subs. 67(1.1)(d) of the EAPWDR.

Panel's decision

Under subs. 67(1)(c) of the EAPWDR, in order to qualify for the MNS, the appellant's medical or nurse practitioner must confirm that the appellant meets *all* of the requirements set out in subs. 67(1.1)(a) through (d). Under s. 7(a) of Schedule C of the EAPWDR, additional nutritional items may be provided if they "are part of a caloric supplementation to a regular dietary intake." The Ministry determined that the appellant's nurse practitioner confirmed that she is being treated for severe schizophrenia and HPTN (a chronic, progressive deterioration of health on account of a severe medical condition), thereby meeting the criterion set out in subs. 67(1.1)(a).

The panel finds that the Ministry's determination that the appellant's nurse practitioner did not confirm that she displays 2 or more of the listed symptoms as a direct result of her chronic, progressive deterioration of health is reasonable based on the evidence. The panel notes that on the MNS form, the appellant's nurse practitioner did not indicate that the appellant displayed any of the listed symptoms – none of the boxes are checked and there is no commentary. Accordingly, the panel finds that the Ministry reasonably determined based on the information provided that the appellant's nurse practitioner had not confirmed that as a result of her schizophrenia and HPTN, she displays two or more of the symptoms listed in subs. 67(1.1)(b).



Additional Nutritional Items

The panel finds that the Ministry's determination that the appellant's nurse practitioner has not indicated that the appellant requires the requested MNS to provide caloric intake to supplement her regular diet is reasonable based on the evidence. In the MNS form, the appellant's nurse practitioner wrote in response to the request to describe how the requested MNS will alleviate the appellant's listed symptoms and provide caloric supplementation to her regular diet, "will assist in following Mediterranean diet, low salt diet." The panel notes that the appellant's nurse practitioner made no reference to how the requested MNS will provide caloric supplementation to her regular diet, as required by subs. 67(1.1)(c) and section 7(a) of Schedule C (the nurse practitioner had indicated "requires additional money to pay for specific foods").

The panel further finds that the Ministry's determination that the appellant's nurse practitioner has not confirmed that failure to receive the requested MNS will result in imminent danger to her health is reasonable based on the evidence. In response to the question, "Describe how the nutritional items requested will prevent imminent danger to the applicant's life", the nurse practitioner wrote, "healthy heart diet." The panel finds that the Ministry reasonably determined that this evidence does not confirm the requirement of subs. 67(1.1)(d) that failure to provide the requested MNS will result in imminent danger to the appellant's life.

Vitamin/Mineral Supplements

The panel finds that the Ministry's determination that the appellant's nurse practitioner has not indicated that failure to provide the requested vitamin or mineral supplementation will result in imminent danger to her health is reasonable based on the evidence. On the MNS form, the nurse practitioner's response to the question to specify the vitamin or mineral supplements requested is "additional money to pay for specific foods." The nurse practitioner did not respond to the question, "Describe how this item or items [vitamin or mineral supplements] will prevent imminent danger to the applicant's life" – the section is left blank. The panel finds that the Ministry reasonably determined that this evidence does not confirm the requirement of subs. 67(1.1)(d).

Accordingly, the panel confirms the Ministry's reconsideration decision to deny the appellant's request for MNS.